

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
GARY CRUZ, and CLAUDE PAIN,	:
Individually and on behalf of all others	:
similarly situated,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
TD BANK, N.A.,	:
	:
Defendant.	:
-----X	

Case No.: 10-CV-8026 (PKC)

**DECLARATION OF JUSTIN JOSEPH D’ELIA IN SUPPORT OF
DEFENDANT’S MOTION TO DISMISS**

I, JUSTIN JOSEPH D’ELIA, declare under penalty of perjury pursuant to U.S.C. §1746 as follows:

1. I am associated with the firm of Duane Morris LLP, counsel for TD Bank, NA (“TD Bank”). I am admitted to practice law in the State of New York. I respectfully submit this declaration in support of TD Bank’s Motion to Dismiss Plaintiff’s Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

2. Annexed hereto as Exhibit A is a true and correct copy of the Amended Complaint filed in *Gary Cruz and Claude Pain, individually and on behalf of all others similarly situated v. TD Bank, N.A.*, Case No.: 10-CV-8026 (PKC).

3. Annexed hereto as Exhibit B is a true and correct copy of the Plaintiff, Gary Cruz’s voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court, Southern District of New York, Manhattan Division.

4. Annexed hereto as Exhibit C is a true and correct copy of the Plaintiff, Gary Cruz’s Discharge of Debtor Order of Final Decree.

5. Annexed hereto as Exhibit D is a true and correct copy of the Plaintiff, Claude Pain's TD Bank, N.A. Signature Card and Name, Address or Account Type Change form; Superior Court of New Jersey Execution Against Goods and Chattels in *Portfolio Recovery Associates, LLC v. Claude Pain*, Docket No. DC-22767-08; Notice of Motion for Turn Over Order in *Portfolio Recovery Associates, LLC v. Claude Pain*, Docket No. DC-22767-08; Superior Court of New Jersey Order to Turn Over in *Portfolio Recovery Associates, LLC v. Claude Pain*, Docket No. DC-22767-08.

6. There has been no prior request for the relief sought herein.

Dated: New York, New York
April 11, 2011

s/ Justin Joseph D'Elia
JUSTIN JOSEPH D'ELIA